

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Connors	Team: Squad #9	CCRB Case #: 201608465	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/09/2016 6:57 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 107	18 Mo. SOL 3/9/2018	EO SOL 3/9/2018	
Date/Time CV Reported Wed, 09/28/2016 8:06 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/05/2016 11:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Mendez	05665	956922	107 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Donohue	07469	953824	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Mendez	Abuse: Police Officer Daniel Mendez detained § 87(2)(b)	§ 87(2)(b)
B.POM Daniel Mendez	Abuse: Police Officer Daniel Mendez searched § 87(2)(b)	§ 87(2)(b)
C.POM Daniel Mendez	Abuse: Police Officer Daniel Mendez did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 9, 2016, at approximately 3:00 p.m., § 87(2)(b) drove to § 87(2)(b) in Queens to pick up his children as per a court mandated child exchange agreement with his wife. This agreement granted § 87(2)(b) visitation rights to visit his children Wednesdays and Fridays between 3:00 p.m. and 8:00 p.m. On this day, § 87(2)(b)'s wife did not appear with their children for the exchange. § 87(2)(b) then made several calls to 911 requesting officers on scene in order to file a Domestic Incident Report against his wife. At 6:57 p.m., PO Kevin Donohue and PO Daniel Mendez of the 107th Precinct responded to § 87(2)(b) where they observed § 87(2)(b) waiting inside his vehicle. The officers parked and then exited from their vehicle, approached § 87(2)(b) and asked him what had happened. § 87(2)(b) told the officers that he had visitation rights to see his children on this day, but that his wife had not appeared for the child exchange. § 87(2)(b) then explained to the officers that § 87(2)(b) is the address of his in-laws and is the mandated pick-up location of the child exchange. § 87(2)(b) then presented the officers a court ordered document signed by a Nassau County judge which listed his visitation rights. After being given this information, PO Mendez then went to speak to § 87(2)(b)'s in-laws, § 87(2)(b) and § 87(2)(b) across the street, a distance of approximately 100 feet, leaving § 87(2)(b) with PO Donohue. Approximately five minutes later, PO Mendez returned from speaking with the in-laws and explained to § 87(2)(b) that he and PO Donohue needed to leave to respond to a "firearm call" but that they would return as soon as possible. The officers then got inside their vehicle and drove away.

Approximately 30 minutes later, PO Donohue and PO Mendez returned to § 87(2)(b) where they again observed § 87(2)(b) waiting beside his vehicle. The officers double parked next to § 87(2)(b)'s vehicle, exited from their vehicle and approached § 87(2)(b). The officers apologized to § 87(2)(b) for the wait and then PO Donohue asked to review the court document that § 87(2)(b) had provided earlier, and then returned to the police vehicle. PO Mendez explained to § 87(2)(b) that his visitation rights had been terminated. § 87(2)(b) then asked PO Mendez for the name of the judge who terminated his visitation rights. PO Mendez replied that he did not know.

PO Mendez then allegedly told § 87(2)(b) to turn around and place his hands behind his back because § 87(2)(b) was under arrest for an outstanding warrant from Manhattan. § 87(2)(b) complied, turned around and placed his hands behind his back. PO Mendez then placed § 87(2)(b) in handcuffs (**Allegation A**). While being placed in handcuffs, § 87(2)(b) requested his medication for "heart palpitations" which was located in his wallet inside his pant pocket. PO Mendez allegedly ignored this request. PO Mendez then opened the rear right door to the police vehicle and sat § 87(2)(b) inside. PO Mendez then allegedly searched § 87(2)(b)'s pants pockets (**Allegation B**). After this search of § 87(2)(b) PO Mendez then closed the door to the police vehicle. While seated inside the police vehicle, § 87(2)(b) again allegedly asked PO Mendez several times for his medication and to be taken to a hospital. PO Mendez again allegedly ignored § 87(2)(b)'s requests (**Allegation C**).

Approximately 20 minutes later, the officers opened the police vehicle door and explained to § 87(2)(b) that his in-laws provided documentation which stated that his visitation rights had been rescinded. The officers then told § 87(2)(b) he had two options, either to have a Domestic Incident Report, which § 87(2)(b) had earlier requested, be prepared and to be placed under

arrest or to go home. § 87(2)(b) then told the officers that he wanted to go home so PO Mendez removed the handcuffs from § 87(2)(b). § 87(2)(b) then stood up from his seat inside the police vehicle. The officers again told § 87(2)(b) to see a Family Court judge and to settle his unpaid fine, then entered into their vehicle and drove away (**Board Review 01**).

§ 87(2)(b) was not summonsed or arrested nor did the officers prepare a Domestic Incident Report as a result of this incident. There is no video footage of this incident.

Mediation, Civil and Criminal Histories

- Mediation was offered to § 87(2)(b) however he rejected it § 87(2)(b).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On November 30, 2016, a request was sent to the New York City Comptroller's Office in regards to any Notice of Claim that may have been filed in regards to this complaint. It will be added to the case file upon receipt (**Board Review 03**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (**Board Review 04**).
- PO Daniel Mendez has been a member of service for two years and this is his first CCRB complaint (**Board Review 05**).

Allegation A – Abuse: Police Officer Daniel Mendez detained § 87(2)(b)

While waiting for PO Donohue to return from speaking to § 87(2)(b)'s in-laws, PO Mendez spoke with § 87(2)(b) to get a better understanding of the child exchange procedure. During the course of this interaction with PO Mendez, § 87(2)(b) stated he was upset and spoke loudly towards PO Mendez because he suffers from partial deafness. § 87(2)(b) continued to express his dissatisfaction, complaining loudly about how the officers were handling his complaint when PO Mendez commanded § 87(2)(b) to turn around and place his hands behind his back. PO Mendez then told § 87(2)(b) that he was under arrest for an outstanding warrant from Manhattan.

PO Mendez and PO Donohue stated they received a radio run for a 10-68 (see complainant) at § 87(2)(b) in Queens. When they arrived, they observed § 87(2)(b) inside his vehicle across the street from the above mentioned address. The officers spoke with § 87(2)(b) briefly about what had happened. § 87(2)(b) told the officers that as part of a Family Court ordered child exchange agreement, he had visitation rights to see his children. On this date, § 87(2)(b) explained that his wife did not appear with his children and that because of this, he wanted to file a Domestic Incident Report. § 87(2)(b) then provided a copy of the court document to the officers and explained that the address he provided over the phone to 911 is the address of his mother-and-father in-laws. The court document listed § 87(2)(b) as the exchange location. PO Mendez then told § 87(2)(b) that he needed to speak with § 87(2)(b)'s in-laws to get a better understanding of this situation and crossed the street to speak with the in-laws who were seated on the front porch to § 87(2)(b). Approximately five minutes later, PO Mendez returned and explained to § 87(2)(b) that they had to go respond

to a “gun call” but that they would return as soon as possible. The officers then entered into their vehicle and drove away.

Approximately thirty minutes later, PO Mendez and PO Donohue returned to § 87(2)(b), where they again observed § 87(2)(b) across the street from the § 87(2)(b). The officers exited from their vehicle and approached § 87(2)(b) who now stood beside the driver side door of his vehicle. The officers apologized to § 87(2)(b) for the wait and then PO Donohue went to speak with § 87(2)(b)'s in-laws while PO Mendez remained with § 87(2)(b).

During his CCRB interview, PO Mendez stated that during the time PO Donohue was investigating what the in-laws knew of this child exchange dispute, § 87(2)(b) became irate by “gesturing with his hands up from his sides and pacing back and forth” in front of PO Mendez. PO Mendez further stated that § 87(2)(b) was “cursing” loudly about his in-laws and at himself. PO Mendez did not remember specifically what § 87(2)(b) was saying. After several attempts at pacifying § 87(2)(b) by asking him to “calm down,” PO Mendez placed § 87(2)(b) in handcuffs for safety reasons. § 87(2)(g). PO Mendez stated that when § 87(2)(b) was detained, the officers obtained § 87(2)(b)'s identification from his person and conducted a background check. During this background check the officers discovered that § 87(2)(b) had an active warrant stemming from an unpaid fine for § 87(2)(b) in Manhattan (**Board Review 06 and 07**).

People v. Square, 872 N.Y.S.2d 693 (2008), states the mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offence. [Furthermore], the flailing of arms while yelling can, for pleading purposes, establish tumultuous behavior under the statute, [however] the charge must nevertheless fail for want of evidence that the defendant's disruptive behavior was of public rather than individual dimension (**Board Review 08**).

People v. Blanding, 2013 N.Y. App. Div. 7639 (2013) states that although the use of handcuffs is not dispositive of whether an investigatory detention on reasonable suspicion has been elevated to an arrest, handcuffing is permissible in such a detention only when justified by the circumstances (**Board Review 09**).

§ 87(2)(g)
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Allegation B – Abuse: Police Officer Daniel Mendez searched § 87(2)(b)

After being detained by PO Mendez and placed in handcuffs, § 87(2)(b) alleged that PO Mendez then searched his person. § 87(2)(b) was unable to specify where he was searched or what items, if any, were removed from his person.

During his CCRB interview, PO Mendez denied searching § 87(2)(b). PO Mendez stated that after placing § 87(2)(b) in handcuffs, he conducted an exterior pat-down of § 87(2)(b)'s pants prior to placing § 87(2)(b) inside his police vehicle. PO Mendez stated that this pat-down was conducted for safety reasons (**Board Review 10**). PO Donohue did not remember observing PO Mendez search § 87(2)(b) (**Encl. Board Review 07**).

§ 87(2)(g)

Allegation C – Abuse: Police Officer Daniel Mendez did not obtain medical treatment for § 87(2)(b)

While being placed in handcuffs by PO Mendez, § 87(2)(b) requested to be taken to a hospital, and PO Mendez allegedly ignored his request. Moments later, after being placed in handcuffs, and seated inside the rear of his police vehicle, § 87(2)(b) again requested to be taken to a hospital, and again PO Mendez allegedly ignored him.

During his initial CCRB interview, PO Mendez denied that § 87(2)(b) requested to be taken to a hospital at any point during the incident (**Encl. Board Review 06 and 07**). PO Mendez stated that upon detaining § 87(2)(b) and placing him in handcuffs, § 87(2)(b) said to him, "Listen, if I am going to be arrested, I have a medical condition that I may have to go to the hospital for." PO Mendez stated that he told § 87(2)(b) that he was not under arrest but that he was being detained for PO Mendez's safety. § 87(2)(b) made no request for additional medical treatment.

The undersigned interviewed PO Mendez a second time with follow-up questions regarding this incident. During his second CCRB interview, PO Mendez stated that while § 87(2)(b) was seated inside his police vehicle, § 87(2)(b) did not request any medical treatment (**Board Review 10**). PO Donohue denied hearing § 87(2)(b) request medical treatment (**Encl. Board Review 07**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date